

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 144.3, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 96, “Birth Registration,” and Chapter 99, “Vital Records Modifications,” Iowa Administrative Code.

The rules in Chapter 96 describe the responsibilities and process for the registration of births. The proposed amendments in Chapter 96 institute a process for establishing parentage on the birth certificate for married lesbian couples when one of the parties to the marriage delivers a child.

The rules in Chapter 99 describe the processes in place for amending vital records. The proposed amendments in Chapter 99 clarify who an entitled person is for purposes of requesting corrections of a minor error or amending a birth certificate; clarify how intended parents are established on a record following a birth by gestational surrogate arrangement; and clarify terminology changing “father” to “parent” and “husband” to “spouse.” These changes are necessary to comply with the *Gartner v. Iowa Department of Public Health*, Supreme Court Decision No. 12-0243.

Any interested person may make written comments or suggestions on the proposed amendments on or before August 27, 2013. Such written comments should be directed to Jill France, Bureau of Health Statistics, Department of Public Health, 321 East 12th Street, Des Moines, Iowa 50319. E-mail may be sent to jill.france@idph.iowa.gov.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement *Gartner v. Iowa Department of Public Health*, Supreme Court Decision No. 12-0243.

The following amendments are proposed.

ITEM 1. Amend paragraph **96.5(1)“b”** as follows:

b. Obtain the signature of the mother or her legal ~~husband~~ spouse or other signature as directed by the state registrar;

ITEM 2. Amend paragraph **96.6(2)“c”** as follows:

c. The original Iowa official birth worksheet completed and signed by the mother, or her legal ~~husband~~ spouse, or as directed by the state registrar; and

ITEM 3. Amend paragraph **96.7(1)“c”** as follows:

c. The ~~father or the mother of the infant~~ or her legal spouse.

ITEM 4. Amend subrule 96.7(5) as follows:

96.7(5) The official non-institution birth worksheet shall include a notarized signature of the mother or her legal ~~husband~~ spouse and shall be accompanied by a clear photocopy of that person’s current government-issued photo identification. If photo identification is unavailable, other identifying documentation may be acceptable to the state registrar.

ITEM 5. Amend subparagraph **96.18(2)“b”(5)** as follows:

(5) The full name of the ~~father~~ mother’s legal spouse. However, if the mother was not married to the ~~father of the child~~ at the time of conception or birth or at any time during the period between conception and birth, the name of the ~~father~~ a second parent shall not be entered on the delayed certificate unless the child has been adopted or legitimated or parentage has been determined by a court of competent jurisdiction ~~or there is evidence of acknowledgment of paternity by both parents.~~

ITEM 6. Amend subrule 99.4(2) as follows:

99.4(2) For a certificate of live birth, entitled persons include in the following descending order of priority:

- ~~a. The single parent or both parents~~ Either parent as shown on the child's certificate of live birth;
or
- ~~b. The mother, in the case of the death or incapacity of the father;~~
- ~~c. The father if listed on the birth certificate, in the case of the death or incapacity of the mother;~~
or
- ~~d.~~ b. The legal guardian or agency having legal custody of the child.

ITEM 7. Amend paragraphs **99.5(1)“b”** and **“c”** as follows:

- ~~b. The mother, in the case of the death or incapacity of the father~~ second parent;
- ~~c. The father~~ second parent if listed on the birth certificate, in the case of the death or incapacity of the mother; or

ITEM 8. Amend subrule 99.6(2) as follows:

99.6(2) For a certificate of live birth, entitled persons include in the following descending order of priority:

- ~~a. The single parent or both parents~~ Either parent as shown on the child's certificate of live birth;
- ~~b. The mother, in the case of the death or incapacity of the father~~ second parent;
- ~~c. The father~~ second parent if listed on the birth certificate, in the case of the death or incapacity of the mother; or
- ~~d. The legal guardian or agency having legal custody of the child.~~

ITEM 9. Rescind subrules 99.15(4) to 99.15(12) and adopt the following **new** subrules in lieu thereof:

99.15(4) Two intended parents—both intended parents are biological parents to the child. If the intended mother is the egg donor and the intended father is the sperm donor to the child being carried by the gestational surrogate:

- ~~a. After the birth of the child, the intended parents shall petition a court of competent jurisdiction to establish legal paternity and maternity of the child.~~
- ~~b. The court shall enter an order requiring the state registrar to reestablish the certificate of live birth naming the intended mother and father as the legal mother and father and requiring the state registrar to seal the original birth certificate and all related documentation.~~
- ~~c. The court order shall:~~
 - ~~(1) Identify the child's full name as stated on the original certificate of live birth;~~
 - ~~(2) State the child's date of birth and place of birth;~~
 - ~~(3) Identify the full names of the birth mother and her legal spouse, if married;~~
 - ~~(4) Disestablish the birth mother and her legal spouse, if married, as the legal parents of the child;~~~~and~~
 - ~~(5) Identify the intended parents' full names prior to any marriage, full current legal names, dates of birth, birthplaces, social security numbers, and full current residential address including county.~~
- ~~d. The intended parents or their legal representative shall:~~
 - ~~(1) Submit a certified copy of the court order to the state registrar;~~
 - ~~(2) Remit administrative and certified copy fees pursuant to rule 641—95.6(144); and~~
 - ~~(3) Include a notarized written request with mailing instructions for the certified copy of the certificate of live birth.~~

99.15(5) Two intended parents—intended mother is biological mother to the child; her legal spouse is not a biological parent. If the intended mother is the egg donor but her legal spouse is not the sperm donor, the intended mother shall petition a court of competent jurisdiction after the birth of the child to establish legal maternity.

- ~~a. The court shall enter an order requiring the state registrar to reestablish the certificate of live birth naming the intended mother as the legal mother and shall require the state registrar to seal the original certificate of live birth and all related documents.~~

- b.* The court order establishing legal maternity shall:
 - (1) Identify the child's full name as stated on the original certificate of live birth;
 - (2) State the child's date of birth and place of birth;
 - (3) Identify the full names of the birth mother and her legal spouse, if married;
 - (4) Disestablish the birth mother and her legal spouse, if married, as the legal parents of the child;
 and
 - (5) Identify the intended mother's full name prior to any marriage, full current name, date of birth, birthplace, social security number, and full current residential address including county.
- c.* The intended mother or her legal representative shall:
 - (1) Submit a certified copy of the court order to the state registrar;
 - (2) Remit administrative and certified copy fees pursuant to rule 641—95.6(144); and
 - (3) Include a notarized written request with mailing instructions for the certified copy of the certificate of live birth.

99.15(6) Two intended parents—intended father is biological father to the child; his legal spouse is not a biological parent.

a. If the surrogate birth mother is unmarried and the intended father is the sperm donor, the unmarried surrogate birth mother and the intended father may complete a Voluntary Paternity Affidavit form after the child's birth to place the intended father's name and information on the certificate of live birth.

b. If the surrogate birth mother is married and the intended father is the sperm donor, the married surrogate birth mother and the intended father shall by court order disestablish the surrogate birth mother's legal spouse as the legal parent and may complete a Voluntary Paternity Affidavit form pursuant to Iowa Code section 144.13.

c. The court order that disestablishes the married surrogate birth mother's legal spouse and the completed Voluntary Paternity Affidavit form shall be submitted to the state registrar.

d. If a certified copy of the certificate of live birth is requested, a notarized written request shall also be submitted to the state registrar with the certified copy fee and mailing instructions.

e. There is no administrative fee to process the completed Voluntary Paternity Affidavit form.

f. Adoption laws shall be followed to reestablish the certificate of live birth by establishing the nonbiological parent on the certificate of live birth pursuant to Iowa Code chapter 600.

99.15(7) Two intended parents—neither biological parent to the child. If the intended parents are neither the egg donor nor sperm donor, adoption laws shall be followed to reestablish the certificate of live birth by disestablishing the birth mother and her legal spouse, if any, and establishing the nonbiological parents on the certificate of live birth pursuant to Iowa Code chapter 600.

99.15(8) One female intended parent—biological mother to the child. If the intended mother is the egg donor to the child being carried by the gestational surrogate:

a. After the birth of the child, the intended mother shall petition a court of competent jurisdiction to establish legal maternity of the child.

b. The court shall enter an order requiring the state registrar to reestablish the certificate of live birth naming the intended mother as the legal mother and requiring the state registrar to seal the original certificate of live birth and all related documentation.

- c.* The court order shall:
 - (1) Identify the child's full name as stated on the original certificate of live birth;
 - (2) State the child's date of birth and place of birth;
 - (3) Identify the full names of the birth mother and her legal spouse, if married;
 - (4) Disestablish the birth mother and her legal spouse, if married, as the legal parents of the child;
 and

- (5) Identify the intended parent's full name prior to any marriage, full current legal name, date of birth, birthplace, social security number, and full current residential address including county.

d. The intended parent or her legal representative shall:

- (1) Submit a certified copy of the court order to the state registrar;
- (2) Remit administrative and certified copy fees pursuant to rule 641—95.6(144); and

(3) Include a notarized written request with mailing instructions for the certified copy of the certificate of live birth.

99.15(9) One male intended parent—biological father to the child.

a. If the surrogate birth mother is unmarried and the intended father is the sperm donor, the unmarried surrogate birth mother and the intended father may complete a Voluntary Paternity Affidavit form after the child's birth to place the intended father's name and information on the certificate of live birth.

b. If the surrogate birth mother is married and the intended father is the sperm donor, the married surrogate birth mother and the intended father shall by court order disestablish the surrogate birth mother's legal spouse as the legal parent and may complete a Voluntary Paternity Affidavit form pursuant to Iowa Code section 144.13.

c. The court order that disestablishes the married surrogate birth mother's legal spouse and the completed Voluntary Paternity Affidavit form shall be submitted to the state registrar.

d. If a certified copy of the certificate of live birth is requested, a notarized written request shall also be submitted to the state registrar with the certified copy fee and mailing instructions.

e. There is no administrative fee to process the completed Voluntary Paternity Affidavit form.

f. If the intended father has been established as the legal father pursuant to paragraph 99.15(9) "a" or "b" and the surrogate birth mother and the intended father wish to remove the surrogate birth mother as the legal mother from the certificate of live birth, the parties shall seek a court order. The court order disestablishing legal maternity shall:

(1) Identify the child's full name as stated on the original certificate of live birth;

(2) State the child's date of birth and place of birth;

(3) Identify the full name of the birth mother; and

(4) Disestablish the birth mother as the legal parent of the child.

g. The intended parent or his legal representative shall:

(1) Submit a certified copy of the court order to the state registrar;

(2) Remit administrative and certified copy fees pursuant to rule 641—95.6(144); and

(3) Include a notarized written request with mailing instructions for the certified copy of the certificate of live birth.

99.15(10) One intended parent—not biological parent to the child. If the intended parent is neither the egg donor nor sperm donor, adoption laws shall be followed to reestablish the certificate of live birth by disestablishing the birth mother and her legal spouse, if any, and establishing the nonbiological parent on the certificate of live birth pursuant to Iowa Code chapter 600.

99.15(11) The state registrar shall seal the original certificate of live birth. The state registrar shall place the original certificate of live birth and all related documents in a sealed file, and the file shall not be opened and inspected except by the state registrar for administrative purposes or upon an order from a court of competent jurisdiction pursuant to Iowa Code section 144.24.

99.15(12) The new certificate of live birth shall not be marked "amended."

ITEM 10. Adopt the following new subrules 99.15(13) and 99.15(14):

99.15(13) The new certificate of live birth shall not be on file at the county registrar's office pursuant to rule 641—95.7(144).

99.15(14) A certified copy fee and an administrative fee to replace a parent's information on a certificate of live birth shall be charged and remitted pursuant to rule 641—95.6(144).

ITEM 11. Amend subrule 99.16(1) as follows:

99.16(1) If the birth mother was legally married at the time of conception or birth or at any time during the period between conception and birth, the name of her ~~husband~~ spouse shall be entered on the certificate of live birth as ~~the father~~ a parent pursuant to Iowa Code section 144.13.

ITEM 12. Amend subrule 99.16(3) as follows:

99.16(3) If the birth mother was legally married at the time of conception or birth or at any time during the period between conception and birth, and her legal ~~husband~~ spouse is not the biological father, the birth mother and the alleged biological father may:

- a.* No change.
- b.* Obtain a court order that disestablishes her legal ~~husband~~ spouse as ~~the biological father~~ a parent; and
- c.* No change.

ITEM 13. Amend subrule 99.17(1) as follows:

99.17(1) If the birth mother was married at the time of conception or birth or at any time during the period between conception and birth, the name of ~~the husband~~ her spouse shall be entered on the certificate of live birth as ~~the father~~ a parent unless paternity has been determined otherwise by a court of competent jurisdiction pursuant to Iowa Code section 144.13.